

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.221 OF 2005

Trent Limited.

... Petitioners.

vs.

Amazon Developers.

.... Respondents.

Mr.V.D'Vitre with Ms.Ved Patrale i/b. Maneksha & Sethna, for Petitioners.

Mr.Virag Tulzapurkar i/b. Kartikeya & Associates, for Respondents.

Mr.Phiroj Palkhiwala i/b. Wadia Gandhi & Co. for Intervenors.

CORAM: D.K.DESHMUKH,J.

DATED: 18th July,2005

P.C.:-

1. Heard the learned Counsel for both the sides including intervener. It is clear from the communication dated 17.9.2004 that the respondents have admitted the entire transaction between the parties. The only query/dispute was that the respondents have requested the petitioners to waive the penalty by way of discount in the fees payable under the contract between the parties on account of delay in commencement of the business arrangement, since the

delay was on account of factors beyond the control of the respondents. Thus, the transaction between the parties is not disputed. Whether the petitioners were justified in not waiving the penalty is a question to be decided by the Arbitrator. However, prima facie it appears that because the petitioners did not agree to waive the penalty, the respondents are not justified in threatening to terminate the contract. In my opinion, therefore, the petitioners have made out a prima facie case in this regard against the respondents.

2. So far as the claim of the Interveners is concerned, it is clear that the interveners were clearly aware of the transaction between the petitioners and respondents and therefore, whatever transaction that has been entered into by them with the respondents is subject to the transaction between the petitioners and respondents. The claim of the interveners is that the transaction between the petitioners and respondents does not create, in favour of the petitioners, any right in the premises and therefore, the Court cannot grant any interim order in relation to the premises in favour of the petitioners. In my opinion, the submission is misconceived. It is to be seen from the arrangement between the parties that the involvement of the petitioners was right from the construction of the building, the designing of the building was also to be examined by the Architect of the petitioners. Prima facie in my opinion, it cannot be said that the petitioners do not have any right in relation to the premises. So far as the contention of the interveners that the petitioners had consented to the transaction between the respondents and interveners is

concerned, the transaction to which consent was given by the petitioners was not in relation to the premises to which the arrangement arrived at between the petitioners and respondents related. It is further to be seen that in the arrangement between the petitioners and respondents admittedly, there is an arbitration clause. The petitioners have issued a notice invoking the arbitration clause nominating their Arbitrator and that was done on 1.6.2005. Admittedly, there are disputes between the parties which are to be resolved by Arbitration, but the respondents have not done anything to get the arbitral tribunal constituted. Looking to this conduct of the respondents and the attitude adopted by the respondents, in my opinion, it is necessary to protect the interest of the petitioners. It is pertinent to note here that admittedly the Corporation has not issued any occupation certificate in relation to the building and therefore, there is no question of any loss being caused to anybody because of grant of temporary injunction restraining the respondents from transferring the property and directing the respondents to maintain status quo. The petition is therefore, granted in terms of prayer clause (b). The petition is disposed of. The respondents are directed to pay costs of this petition to the petitioners as incurred by the petitioners.